

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:07CV359-03-MU

CHARLES SHAWN GARY,

Plaintiff,

v.

POLK COUNTY JAIL,

Defendants.

**ORDER**

**THIS MATTER** comes before the Court on initial review of Plaintiffs' Complaint under 42 U.S.C. § 1983, filed November 11, 2007. (Document No. 1. )

Plaintiff claims that on July 2, 2007 while walking down the stairs to sweep and mop the bottom floor of the jail, he tripped on a loose step cover and fell down the stairs injuring his back. Petitioner states that he "would like the court to appoint [him] an attorney and sue for negligence, pain and suffering." (Complaint at 4.) By way of relief, Plaintiff is asking for one million dollars.

A cause of action pursuant to 42 U.S.C. § 1983 requires a deprivation of a right secured by the Constitution or other laws of the United States by a person acting under color of state law. Plaintiff's claim is that the Polk County Jail was negligent in that they had a loose cover on the stairs which caused him to be injured. Plaintiff's Complaint must be dismissed as his negligence claim is not sufficient to state a constitutional claim. Daniels v. Williams, 474 U.S. 327 (1986).

**NOW, THEREFORE, IT IS HEREBY ORDERED** that:

- 1) Plaintiffs' Complaint is Dismissed for failure to state a claim for relief;
- 2) Plaintiff's request that counsel be appointed (contained within Complaint) is dismissed as

moot.

**SO ORDERED.**

Signed: November 16, 2007

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
United States District Judge

